SUPREME COURT, U.S.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 399

NEW ORLEANS INSURANCE EXCHANGE,
Appellant

v.

UNITED STATES OF AMERICA,
Appellee

On Appeal from the United State District Court for the Eastern District of Louisiana, New Orleans Division

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Brief on behalf of the State of Louisiana, as Amicus Curiae.

JACK P. F. GREMILLION,
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INTEREST OF THE SOVEREIGN STATE OF LOUISIANA

This case raises squarely the vital issue of whether or not the regulation of the business of insurance is subject to state control, where the state has acted in accordance with the authority specifically delegated to it by the Congress in the McCarran-Ferguson Act, 15 U.S.C. 1011-1015.

The same McCarran-Ferguson Act, involving attempts by the Federal Trade Commission to establish its jurisdiction over the regulation of insurance advertising, is presently pending before this court on writs of certiorari. It is admitted by all parties that these two cases, *Federal Trade Commission v. American Hospital and Life Insurance Company*, and *Federal Trade Commission v. National Casualty Company*, are extremely important test cases. The instant case involves just as important an issue as exist in the American Hospital case and the National Casualty case, it being simply another facit of the

same issue and question of applicability and affect of the McCarran-Ferguson Act.

The determination of this issue is of critical importance to the State of Louisiana and to every other individual state, because the effect of the decision of the District Court in the instant case is to thwart the expressed intention of the Congress when it enacted the McCarran-Ferguson Act for the specific purpose of alleviating the chaos which resulted from the decision in *United States v. Southeastern Underwriters Association, et al*, 322 U.S. 533.

This Court has summarily granted the Government's motion to affirm, without permitting briefs or argument on the merits of the case. As a result of this action the State of Louisiana and various other parties vitally interested and affected by the decision of the lower court were not given an opportunity to express themselves and to raise certain points in connection with the issues of this case all of which affects not only the insurance industry in the State of Louisiana but in the entire United States as well.

ARGUMENT

In a long line of decisions, starting with *Paul v. Virginia*, 8 Wall (U.S.) 168, this Court held that the business of insurance did not fall within the contemplation of the Sherman Act, but on the contrary, was exclusively subject to control and regulation by the several states. *Ducot v. Chicago*, 10 Wall (U.S.) 410 (1870); *Liverpool etc. Ins. Co. v. Oliver*, 10 Wall (U.S.) 566 (1871); and *Fire Ass'n. of Phila. v. New York*, 119 U.S. 110 (1886); *Hooper v. California*, 155 U.S. 648; *Noble v. Mitchell*, 164 U.S. 367, *Orient Ins. Co. v. Daggs*; 172 U.S. 557; *New York L. Ins. Co.*

v. Cravens, 178 U.S. 389; *Nutting v. Massachusetts*, 183 U.S. 553; *New York L. Ins. Co. v. Deer Lodge County*, 231 U.S. 495; *Northwestern Mut. L. Ins. Co. v. Wisconsin*, 247 U.S. 132; *National Union F. Ins. Co. v. Wanberg*, 260 U.S. 71, *Bothwell v. Buckbee Meers Co.*, 275 U.S. 274; *German Alliance Ins. Co. v. Lewis*, 233 U.S. 389; *O'Gorman and Young, Inc. v. Hartford Fire Ins. Co.*, 282 U.S. 251; *Fidelity Mutual Life Ins. Ass'n. v. Mettler*, 185 U.S. 301; *Iowa Life Ins. Co. v. Lewis*, 187 U.S. 335; *Farmers & Merchants Ins. Co. v. Dabney*, 189 U.S. 301; *Osborn et al v. Ozlin, et al*, 310 U.S. 53; *Hoopeston Canning Co. et al, v. Cullen*, 318 U.S. 313.

The results of the cases cited above show conclusively that the states have long had power to regulate and have regulated interstate commerce in insurance. There has developed a tremendous body of state laws regulating the insurance business. Insurance has long been recognized as a business affected with a public interest and over the years it came to be extensively regulated by state law. It appears obvious that whatever regulation of the insurance business there was at the time this court ruled in the case of *United States v. Southeastern Underwriters Association*, 322 U.S. 533 (1944), such was state regulation.

This state regulation had application not only to local companies doing business entirely intrastate but also to companies domiciled elsewhere doing business interstate. In sum there can be no doubt that state regulation was astride the interstate aspects of the insurance business. See Richards on Insurance (5th ed. 1952), Sections 41-44. The decision in the Southeastern Underwriters case recognizing insurance as commerce did not change the quality or nature of the

activities and if the insurance activities were interstate commerce after the Southeastern Underwriters case then it can not be denied that they were in fact, interstate commerce prior to the Southeastern Underwriters case in the states wherein such activities were regulated. These state regulatory activities existing long prior to the Southeastern Underwriters case were in fact regulations of interstate commerce. This was the power which the states had and used prior to the Southeastern Underwriters case and which Congress intended and did restore by the McCarran Act.

It cannot be seriously questioned that the Congress has the power to permit the states to regulate interstate commerce. This doctrine, known as the doctrine of Congressional consent, is included in the plenary power of Congress over interstate commerce and has been followed in so many cases as to be now well settled in the law. *Leisy v. Hardin*, 135 U.S. 100 (1890); *Re Rahrer (Wilkerson v. Rahrer)*, 140 U.S. 545 (1891); *Clark Distilling Co. v. Western Maryland R. Co.*, 242 U.S. 311 (1917); *Whitfield v. Ohio*, 297 U.S. 431 (1936); *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 769 (1945); *International Shoe Co. v. Washington*, 326 U.S. 310, 315 (1945); *Kentucky Whip & Collar Co. v. Illinois Central Railroad Co.*, 299 U.S. 334 (1937); *Hooven & Allison v. Evatt*, 324 U.S. 652 (1945).

In 1944 the long established and intricate system of state regulation of the business of insurance was convulsed by the decision in *United States v. Southeastern Underwriters Association*, 322 U.S. 533. This decision discarded the long line of decisions represented by *Paul Virginia*, and declared that the business of insurance when conducted across state lines

involved interstate commerce and was, therefore, subject to Federal regulatory statutes, such as the Sherman Act.

The following year the Congress attempted to set at rest the critical problems raised by this decision throughout the nation by passing the McCarren-Ferguson Act, 15 U.S.C. 1011-1015, which in the introductory section declared that "*the continued regulation and taxation by the several States of the business of insurance is in the public interest*".

We quote the McCarran-Ferguson Act, 15 U.S.C. 1011-1015 in full for the court's convenience in Appendix "A" attached hereto.

It has been established that Congress may consent to the states regulation of interstate commerce. It has also been established that the states have long had power to regulate and have long regulated interstate commerce in insurance. The question remains whether Congress has, in the McCarran Act, given its consent to regulation by the states of interstate insurance activities.

The answer has been furnished by the Supreme Court in *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408 (1946). There the McCarran Act was alleged to be ineffective to give the state of South Carolina power to tax interstate commerce. The Court held that the McCarran Act did give the state such power. The purpose of the McCarran Act was enunciated by the Court as follows (pp. 429-431):

> "Obviously Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of

insurance. This was done in two ways. One was by removing obstructions which might be thought to flow from its own power, whether dormant or exercised, except as otherwise expressly provided in the Act itself or in future legislation. The other was by declaring expressly and affirmatively that continued state regulation and taxation of this business is in the public interest and that the business and all who engage in it 'shall be subject to' the laws of the several states in these respects.

"Moreover, in taking this action Congress must have had full knowledge of the nation-wide existence of state systems of regulation and taxation; of the fact that they differ greatly in the scope and character of the regulations imposed and of the taxes exacted; and of the further fact that many, if not all, include features which, to some extent, have not been applied generally to other interstate business. Congress could not have been unacquainted with these facts and its purpose was evidently to throw the whole weight of its power behind the state systems, notwithstanding these variations.

" * * * it clearly put the full weight of its power behind existing and future state legislation to sustain it from any attack under the commerce clause to whatever extent this may be done with the force of that power behind it, subject only to the exceptions expressly provided for."

In *Wilburn Boat Company v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955), in which this Court declined to apply Federal admiralty rules to the in-

terpretation of a maritime insurance policy, Mr. Justice Black, in reviewing the enactment and effect of the McCarran-Ferguson Act, made the following statements, at pages 319-320:

> "Passage of the bill followed *United States v. Southeastern Underwriters Association*, supra, holding that, despite the Constitutional Doctrine embodied in the *Paul v. Virginia* line of cases, Congress had power under the Constitution to regulate interstate insurance transactions. In the *South-Eastern* case, however, all the opinions had emphasized the historical fact that states had always been free to regulate insurance. The measure Congress passed shortly thereafter, known as the McCarran Act, was designed to assure that existing state power to regulate insurance would continue.
>
> Under our present system of diverse state regulations, which is as old as the Union, the insurance business has become one of the great enterprises of the Nation. Congress has been exceedingly cautious about disturbing this system, even as to marine insurance where Congressional power is undoubted. We, like Congress, leave the regulation of marine insurance where it has been, with the States".

Following the law as settled by the above cited decisions of this Court, the Courts of Appeals have acted with complete unanimity in holding that under the McCarran-Ferguson Act, the right to regulate the business of insurance is reposed in the states, and in those states which have adopted regulations, the Sherman Act, the Clayton Act and the Federal Trade Commission Act are not applicable.

In *North Little Rock Transportation Co. v. casualty Reciprocal Exchange*, 181 F. 2d 174 (1950), the Court of Appeals for the 8th Circuit, in holding that the Sherman Act was not applicable, since Arkansas had by statute regulated the fixing of insurance rates, said (at page 176):

> "The purpose of the McCarran Act was to permit the States to continue the regulation of the business of insurance, unhampered, to the extent provided by the Act, by federal legislation relating to interstate commerce".

Application for a writ of certiorari to review that decision was denied by this Court, 340 U.S. 823.

In *American Hospital & Life Insurance Co. v. Federal Trade Commission*, 243 F. 2d 719 (1957), the Court of Appeals for the 5th Circuit held that under the McCarran-Ferguson Act, the Federal Trade Commission was without jurisdiction to regulate insurance advertising in those states which have enacted laws for the regulation of false and deceptive advertising. The Federal Trade Commission has also applied for a writ of certiorari to review this decision, which has been granted.

The decisions of the Courts in the above cited cases are in complete accord with the statements made during the congressional debates on the McCarran-Ferguson Act.

> "Mr. McCarran: During the three year moratorium the States may, if they see fit to do so, enact legislation for the purpose of regulation. If they do enact such legislation, to the extent that they regulate, they will have taken the business of insurance in the respective states out from under

the Sherman Anti-Trust Act, the Clayton Act, and the other acts" (91 Cong. Rec. 1443).

* * * * * *

Mr. Ferguson: "After the moratorium has expired, if a State has not legislated on the subjects covered by the three acts to which reference has been made, those acts shall be applicable to the business of insurance. But insofar as the State is concerned, which has specifically legislated on the subject, the three acts shall not apply" (91 Cong. Rec. 1444).

* * * * * *

Mr. Ferguson: "There is no attempt here to have Congress throttled in the future acting upon insurance legislation. Subsection (b) of Section 2 provides that if Congress does act, the act shall specifically relate to the business of insurance.

"Mr. O'Mahoney: That is correct.

"Mr. Ferguson: What we have in mind is that the insurance business, being interstate commerce, if we merely enact a law relating to interstate commerce, or if there is a law in the books relating in some way to interstate commerce, it would not apply to insurance. We wanted to make sure that Congress would act specifically with reference to insurance in enacting the law.

"Mr. O'Mahoney: In other words, no existing law and no future law should, by mere implication, be applied to the business of insurance.

"Mr. Ferguson: That is correct" (91 Cong. Rec. 1487).

* * * * * * *

"Mr. Barkley: I am not uneasy about the situation. I do not believe that hereafter the Congress will not have full authority to deal with the subject if the States do not do so" (91 Cong. Rec. 1488).

In *Miley v. John Hancock Mutual Life Insurance Co., et al*, 48 F. Supp. 299 (1957), the United States District Court (Mass.) held that the Sherman Act was inapplicable to a claim involving the insurance business, in view of the fact that the State of Massachusetts had enacted a statute regulating all phases of the insurance business, under the authority granted by Congress in the McCarran-Ferguson Act. That decision was affirmed by the United States Court of Appeals for the First Circuit, 242 F. 2d 758, and on October 14, 1957 this Court denied an application for a writ of certiorari.

While it is true that the denial of a writ of certiorari by this Court does not necessarily carry with it approval of the decision sought to be reviewed, nevertheless, the effect of the denial of a writ in the *Miley* case is to leave the insurance laws of Massachusetts in full force and effect. On the other hand, the effect of the decision of this Court in the *New Orleans Insurance Exchange* case is to render the insurance laws of the State of Louisiana inoperative, where a violation of the Sherman Act involving the insurance business is alleged.

In the *New Orleans Insurance Exchange* case, the Government conceded, and the trial judge found

(148 F. Supp. 915, at page 920, Footnote 17) that "Louisiana has a comprehensive insurance code providing for the complete regulation of the insurance industry within the state. La. R.S. 22:1-22: 1734." The Louisiana Insurance Code includes criminal penalties up to two thousand dollars or imprisonment for one year or both. La. R.S. 22:1455. The more pertinent provisions of the Louisiana Insurance Code are provided for the court's convenience in Appendix "B" attached hereto.

These judicial interpretations coming after the passage of the McCarran Act are all unanimous and clear-cut affirmations that the Congress in the McCarran Act intended to and did in fact, consent to the regulation by the states of interstate insurance activities. The decision of the District Court in the instant *New Orleans Insurance Exchange* case is the only dissent.

The Government's position in this case rests upon a contention that Section 3 (b) of the McCarran-Ferguson Act *removes completely from state control* any "act of boycott, coercion, or intimidation". Section 3 of the McCarran Act is the so-called "mortorium" section whereby the Sherman Act and certain other Federal laws are suspended until June 30, 1948. This section reads as follows:

> "(a) Until June 30, 1948. . . the Sherman Act***the Clayton Act***the Federal Trade Commission Act***and the Robinson-Patman Antidiscrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof. (b) Nothing contained in this act shall render the said Sherman Act inapplicable to any agree-

ment to boycott, coerce, or intimidate, or act of boycott, coercion or intimidation." 15 U.S.C. 1013.

The trial court has adopted an interpretation of Sub-Section 3 (b) which nullifies state control of the insurance business for all practical purposes. The Government has claimed in this case and can claim in almost any conceivable situation involving alleged violations of the Sherman Act in the business of insurance that boycott, coercion, or intimidation exist.

The Louisiana Insurance Code expressly covers "boycott, coercion and intimidation". La. R.S. 22: 1214 A. In addition, Louisiana law also includes a "Little Sherman Antitrust Act". This act is appended hereto as Appendix "C".

In an address by the Honorable Victor R. Hanson, Assistant Attorney General in charge of the Anti-Trust Division, Department of Justice, delivered before the National Association of Independent Insurers, in Chicago, Illinois, on Wednesday, October 16, 1957, the following alarming threat is made:

> "We are also concerned with acts of coercion, intimidation and boycott, wherever they may appear in the insurance field, including such conduct in the activity of rating bureaus and their associated bodies * * * Price fixing and other non-coercive restraints imposed by rating bureaus are subject to the Sherman Act to the extent that such business is not regulated by insurance. I do not believe that an exemption exists for these activities merely because a state has legislation, if it does not adequately enforce its regulations. . .".

This threat by the Department of Justice demonstrates that the regulation of the business of insurance

by the several states shall be subjected to the discretion of the Department of Justice in determining whether or not the states are "adequately" enforcing their state laws and regulations. Such a result was never intended by Congress in enacting the McCarran-Ferguson Act. The declaration of policy by the Congress in the preamble to that statute plainly showed that the regulation and taxation of the business of insurance can best be handled at state levels.

Congress could and did validly consent that the several states regulate insurance, whether interstate or intrastate. However, this grant was not unconditional, as the McCarran Act plainly says that Federal acts are ousted only to the extent of state regulation.

A clear expression of the concept that enactment of state law, of itself, accomplishes an ouster (to the extent of the enactment), is found in an exchange between Senator McCarran and Senator Murdock which occurred during the course of debate on Public Law 15.

> "Mr. McCarran: * * * Regulatory acts must be enacted by the several States in each of the several States. Otherwise the antitrust acts become effective after January 1, 1948 * * *
>
> "Mr. Murdock: And it is intended that on the expiration of the moratorium, the Sherman Act, the Clayton Act, and the other acts mentioned will again become effective except —
>
> "Mr. McCarran: Except as the States themselves have provided regulations * * *
>
> "Mr. Pepper: (Reading Section 2). Does that mean that after January 1, 1948, the States may

determine whether or not the Sherman and the other acts become applicable to the business of insurance?

"Mr. McCarran: The answer to that question is 'Yes'. During the 3-year moratorium the States may, if they see fit to do so, *enact legislation* for the purpose of regulation. If they *do enact such legislation*, to the extent that *they regulate they will have taken the business of insurance* in the respective States out from under the Sherman Anti-Trust Act, the Clayton Act, *and the other acts* * * * ". (Emphasis added) (91 Cong. Rec. 1471).

The Congress having placed the states in position to control and regulate the insurance business through the passage of state laws, did not contemplate nor authorize federal review of the conduct of the sovereign states in enforcing their laws. One sovereign cannot conceivably interpret its own laws on the basis of its judgment of the efficiency with which another sovereign enforces its laws. A state's sovereign power must include the authority to judge its own acts, as the states are supreme within their spheres. Under the McCarran Act their spheres include the power to regulate insurance.

The Congress having withdrawn the applicability of certain federal statutes to the extent that the insurance business is regulated by state law, each state has the right "to order its own affairs and govern its own people". 11 Am. Jur. 171 (1937). Under Public Law 15, a state has the same unlimited jurisdiction to make and enforce its own laws within its limits as another nation—except where that jurisdiction is

surrendered or restrained by the Federal Constitution. Here there is no such surrender or restraint.

South-Eastern Underwriters was a four to three decision. Mr. Justice Black delivered the opinion of the Court. Mr. Justice Roberts and Mr. Justice Reed took no part in the consideration of the case. Mr. Chief Justice Stone wrote an extensive and vigorous dissent in which he was joined by Mr. Justice Frankfurter and Mr. Justice Jackson wrote a separate convincing dissent. *If the issue was so substantial and so close a question in 1944 that the decision was four to three, and the Congress immediately enacted the McCarran-Ferguson Act to restore control of the insurance business to the states how can the issue be so unsubstantial in 1957. The scope and validity of the "exception" relating to "boycott, coercion and intimidation" have not been considered by this Court on the merits, and a proper understanding of the Court's position on this question is of critical importance throughout the nation.*

The decision of this Court in the *New Orleans Insurance Exchange* case may well again convulse the insurance industry. It is respectfully submitted that if this Court is again to permit such a result, at least the vital issues in this case should be briefed and argued on their merits. This Court has rendered no opinion whatever and has permitted the decision of the District Court to stand, without comment or elaboration. Even if this Court should hold the McCarran-Ferguson Act to be without effect as the District Court did, considerable clarification of the difficulties and problems confronting the insurance industry and the responsibilities of the respective state insurance

Commissioners could be obtained from an opinion of this Court, after considering this case on its merits.

CONCLUSION

The decree in this case was rendered on the Government's motion to affirm, without giving an opportunity to present briefs and arguments on the merits of the case. This action of the court was taken under Rule 16 (3) of the Revised Rules providing that:

> "The court will receive a motion to affirm the judgment sought to be reviewed on appeal from a Federal court on the *ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as* to not to need further argument."

Regardless of the other issues involved in this case, it is submitted that the single issue discussed in this brief is, in itself, so substantial as to fully justify and deserve the attention of this Court on the merits. Accordingly, this brief is filed in support of Appellant's petition for a rehearing.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General of Louisiana

APPENDIX "A"

The McCarran-Ferguson Act

Title 15 U.S.C. Sections 1011-1015

"Sec. 1. Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided,* That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Sec. 3. (a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the

Robinson-Patman Antidiscrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Sec. 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 5. As used in this Act, the term 'State' includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 6. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected."

APPENDIX "B"

Louisiana Revised Statutes of 1950, Title 22, Section 1214 A as amended:

PART XXVI. UNFAIR TRADE PRACTICES

§ 1214. Methods, acts, and practices which are defined herein as unfair or deceptive

A. The following are declared to be unfair methods of competition and unfair or deceptive acts and practices in the business of insurance:

(1) Misrepresentations and false advertising of policy contracts. Making, issuing, or circulating, or causing to be made, issued, circulated, any estimate, illustration, circular or statement misrepresenting the term of any policy issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any insurer for the purpose of inducting or tending to induce such policyholder to lapse, forfeit, or surrender his insurance, or making any representation that the promised coverage is available to groups of persons when such persons do not fall within groups defined in this Code. In case of advertisements of policies providing health, accident, sickness or medical benefits where such policies are either cancellable or renewable at the option of the insurer, such adver-

tisements shall contain a statement to that effect in prominent type, and when details of benefits provided by a particular policy or plan of accident or health insurance are set forth in any advertising material, such advertising material shall disclose the major limitations of such policy or plan as well as the coverage advantage or benefits offered or promised.

(2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station; or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Boycott, coercion and intimidation. Entering into any agreement to commit or by any concerted action committing any act of boycott, coercion or intimidating resulting or tending to result in unreasonable

restraint of, or a monopoly in, the business of insurance.

(5) False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

(6) Stock operations and advisory board contract. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any corporation, or securities or any special advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insure.

(7) Unfair discrimination.

(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract

of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract, provided that, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business or any other relevant factor.

(b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any policy or contract of health or accident insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever, provided that, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business or any other relevant factor.

(c) Violating the provisions of R.S. 22:652.

(8) Rebates. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of insurance including life insurance, life annuity or health and accident insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as induce-

ment to such insurance or annuity or in connection therewith, any stock, bonds, or other securities of any insurer or other corporation, association, or partnership, or any dividends or profits secured thereon, or anything of value whatsoever not specified in the contract.

Nothing in paragraph (7) or this paragraph (8) of this Sub-section shall be construed as including within the definition of discrimination or rebates any of the following practices:

(a) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(b) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have paid premiums in advance or continuously for a specified period made premium payment directly to an office of the insurer in an amount which fairly represents the saving in collection expense;

(c) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year;

(d) Agents accepting on their own responsibility, notes for the first premiums.

(9) Requiring as a condition precedent to lending money upon the security of a mortgage upon real or

movable property, that the owner of the property to whom the money is to be loaned, negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers, provided, however, that this provision shall not prevent the exercise by any insurer of its right to approve or disapprove the insurer selected by the borrower to underwrite the insurance.

(10) Issuing or causing to be issued at a premium rate less than the approved or customary rate any policy of insurance of any type or description upon life or property whenever such policy is to be furnished or delivered to the purchaser or pledgee or mortgagee of any property as an inducement to purchase or hypothecate said property, provided that nothing in this paragraph or in this act shall prohibit the issuance of creditor group life insurance, or creditor group health and accident insurance.

(11) Any violation of any prohibitory law of this state. As amended Acts 1954, No. 87, § 1; Acts 1956, No. 310, § 1.

Louisiana Revised Statutes of 1950, Title 22, Section 1455:

> "Violation of any provision of this Code, the punishment for which is not otherwise specifically stated herein, is declared to be a misdemeanor and is punishable by a fine of not less than ten dollars or more than two thousand dollars, or by imprisonment for not more than one year or both fine and imprisonment at the discretion of the court, in addition to any other provision for revocation, suspension or forfeiture of any license, power or privilege provided herein or otherwise provided by law."

APPENDIX "C"

Louisiana Constitution of 1921, Article 19, Section 14, as amended:

"It shall be unlawful for persons or corporations, or their legal representatives, to combine or conspire together, or to unite or pool their interests for the purpose of forcing up or down the price of any agricultural or manufactured product or article of necessity, for speculative purposes, and all combinations, trusts, or conspiracies in restraint of trade, commerce or business, as well as all monopolies or combinations to monopolize trade, commerce or business, are hereby prohibited in the State of Louisiana, and it shall be the duty of the Attorney General, of his own motion, or any District Attorney of the State, when so directed by the Governor or the Attorney General, to enforce this provision by the injunction or other legal proceedings, in the name of the State of Louisiana, and particularly, by suits for the forfeiture of the charters of offending corporations, incorporated under the laws of the State of Louisiana, and for the ouster from the State of foreign corporations. Provided, however, that nothing herein contained shall prevent the Legislature from provided additional remedies for the enforcement of this Section."